

Robert G. Hubbard, JR.
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

Case No.: CV-13-06917-PLA

POM WONDERFUL LLC, A
DELAWARE LIMITED LIABILITY
COMPANY,

Plaintiff,

vs.

ROBERT G. HUBBARD D/B/A PUR
BEVERAGES, PORTLAND
BOTTLING COMPANY, AN
OREGON COMPANY, AND DOES
1 THROUGH 10, INCLUSIVE,

Defendant

DEFENDANT'S FIRST AMENDED
ANSWER TO PLAINTIFFS FIRST
AMENDED COMPLAINT FOR :
FEDERAL TRADEMARK
INFRINGEMENT; VIOLATION OF
THE LANHAM ACT 43(A);
UNFAIR COMPETITION UNDER
CALIFORNIA BUSINESS AND
PROFESSIONS CODE 17200 ET
SEQ.; CALIFORNIA COMMON
LAW UNFAIR COMPETITION

DEMAND FOR TRIAL BY JURY

Comes now, Robert G. Hubbard, DBA PUR Beverages and Northwest
Beverage Distributors, ("Mr. Hubbard"), defendant in the above entitled action,
and hereby answer the Plaintiff POM Wonderful LLC ("Plaintiff") amended
complaint as follows:

Answering paragraph 1, Mr. Hubbard lacks information sufficient to
form a belief as to the allegations contained therein, and on that basis denies each
and every allegation.

Answering paragraph 2, Mr. Hubbard denies the allegations of the
current location of Mr. Hubbard and his businesses, but admits that Mr. Hubbard is

DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :
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1 involved in the manufacture and sale of Pur Pom. Mr. Hubbard denies any
2 remaining allegations.
3

4 Answering paragraph 3, Mr. Hubbard admits that Portland Bottling is
5 located at 1321 NE Couch St. Portland, OR 97232. Mr. Hubbard admits that
6 Portland Bottling is a co-packer of beverages, and that Mr. Hubbard has paid
7 Portland Bottling to co-pack the drink Pur Pom. Mr. Hubbard denies any
8 remaining allegations.
9
10

11 Answering paragraph 4, Mr. Hubbard lacks information sufficient to
12 form a belief as to the knowledge of the Plaintiff, or its intent to amend the
13 Complaint, and on that basis denies the allegations.
14

15 Answering paragraph 5, Mr. Hubbard denies each and every
16 allegation contained therein.
17

18 Answering paragraph 6, Mr. Hubbard denies that he conducts
19 business and/or distributes products in California. Mr. Hubbard denies each and
20 every allegation contained therein.
21

22 Answering paragraph 7, Mr. Hubbard denies that this Court has
23 subject matter jurisdiction.
24

25 Answering paragraph 8, Mr. Hubbard denies that the venue is proper
26 in this District, and deny the remaining factual allegations contained therein.
27

28 Answering paragraphs 9, Mr. Hubbard lacks information sufficient to
29 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each
30 and every allegation.
31

32 DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :
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COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;
CALIFORNIA COMMON LAW UNFAIR COMPETITION - 2

1 Answering paragraphs 10, Mr. Hubbard lacks information sufficient
2 to form a belief in regards to the Plaintiff's allegations, and on that basis, denies
3 each and every allegation.
4

5 Answering paragraphs 11, Mr. Hubbard lacks information sufficient
6 to form a belief in regards to the Plaintiff's allegations, and on that basis, denies
7 each and every allegation.
8

9 Answering paragraph 12, Mr. Hubbard lacks information sufficient to
10 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each
11 and every allegation.
12

13 Answering paragraph 13, Mr. Hubbard denies each and every
14 allegation therein.
15

16 Answering paragraph 14, Mr. Hubbard lacks information sufficient to
17 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each
18 and every allegation.
19

20 Answering paragraph 15, Mr. Hubbard lacks information sufficient to
21 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each
22 and every allegation.
23

24 Answering paragraph 16, Mr. Hubbard lacks information sufficient to
25 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each
26 and every allegation.
27

28 Answering paragraph 17, Mr. Hubbard denies each and every
29 allegation contained therein.
30
31

32 DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :
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CALIFORNIA COMMON LAW UNFAIR COMPETITION - 3

1 Answering paragraph 18, Mr. Hubbard denies each and every
2 allegation contained therein.
3

4 Answering paragraph 19, Mr. Hubbard lacks information sufficient to
5 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each
6 and every allegation.
7

8 Answering paragraph 20, Mr. Hubbard lacks information sufficient to
9 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each
10 and every allegation.
11

12 Answering paragraph 21, Mr. Hubbard lacks information sufficient to
13 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each
14 and every allegation.
15

16 Answering paragraph 22, Mr. Hubbard lacks information sufficient to
17 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each
18 and every allegation.
19

20 Answering paragraph 23, Mr. Hubbard lacks information sufficient to
21 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each
22 and every allegation.
23

24 Answering paragraph 24, Mr. Hubbard lacks information sufficient to
25 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each
26 and every allegation.
27
28

1 Answering paragraph 25, Mr. Hubbard lacks information sufficient to
2 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each
3 and every allegation.
4

5 Answering paragraph 26, Mr. Hubbard lacks information sufficient to
6 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each
7 and every allegation.
8

9 Answering paragraph 27, Mr. Hubbard lacks information sufficient to
10 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each
11 and every allegation.
12

13 Answering paragraph 28, Mr. Hubbard lacks information sufficient to
14 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each
15 and every allegation.
16

17 Answering paragraphs 29, Mr. Hubbard denies each and every
18 allegation contained therein.
19

20 Answering paragraph 30, Mr. Hubbard denies each and every
21 allegation contained therein.
22

23 Answering paragraph 31, Mr. Hubbard denies each and every
24 allegation contained therein.
25

26 Answering paragraph 32, Mr. Hubbard admits manufacturing and
27 selling a beverage named Pur Pom and that Exhibit D is a photocopy of an image
28 of the Pur Pom beverage, but deny that the drink is considered an energy drink, and
29 denies all remaining allegations.
30
31

32 DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :
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COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;
CALIFORNIA COMMON LAW UNFAIR COMPETITION - 5

1 Answering paragraphs 33, Mr. Hubbard denies each and every
2 allegation contained therein.
3

4 Answering paragraph 34, Mr. Hubbard denies each and every
5 allegation contained therein.
6

7 Answering paragraph 35, Mr. Hubbard lacks information sufficient to
8 form a belief in regards to the Plaintiff's allegations, and on that basis, denies each
9 and every allegation.
10

11 Answering paragraph 36, Mr. Hubbard denies each and every
12 allegation contained therein.
13

14 Answering paragraph 37, Mr. Hubbard denies each and every
15 allegation contained therein.
16

17 Answering paragraph 38, Mr. Hubbard denies each and every
18 allegation contained therein.
19

20 Answering paragraph 39, Mr. Hubbard denies each and every
21 allegation contained therein.
22

23 Answering paragraph 40, Mr. Hubbard denies each and every
24 allegation contained therein.
25

26 Answering paragraph 41, Mr. Hubbard denies each and every
27 allegation contained therein.
28

29 Answering paragraph 42, Mr. Hubbard denies each and every
30 allegation contained therein.
31

1 Answering paragraph 43, Mr. Hubbard denies each and every
2 allegation contained therein.
3

4 Answering paragraph 44, Mr. Hubbard denies each and every
5 allegation contained therein.
6

7 Answering paragraph 45, Mr. Hubbard repeats its responses to
8 paragraphs 1-44 as though set forth here in full.
9

10 Answering paragraph 46, Mr. Hubbard denies each and every
11 allegation contained therein.
12

13 Answering paragraph 47, Mr. Hubbard denies each and every
14 allegation contained therein.
15

16 Answering paragraph 48, Mr. Hubbard denies each and every
17 allegation contained therein.
18

19 Answering paragraph 49, Mr. Hubbard denies each and every
20 allegation contained therein.
21

22 Answering paragraph 50, Mr. Hubbard denies each and every
23 allegation contained therein.
24

25 Answering paragraph 51, Mr. Hubbard denies each and every
26 allegation contained therein.
27

28 Answering paragraph 52, Mr. Hubbard denies each and every
29 allegation contained therein.
30

31 Answering paragraph 53, Mr. Hubbard denies each and every
32 allegation contained therein.

1 Answering paragraph 54, Mr. Hubbard repeats its responses to
2 paragraphs 1 through 53 as though set forth here in full.
3

4 Answering paragraph 55, Mr. Hubbard denies each and every
5 allegation contained therein.
6

7 Answering paragraph 56, Mr. Hubbard denies each and every
8 allegation contained therein.
9

10 Answering paragraph 57, Mr. Hubbard denies each and every
11 allegation contained therein.
12

13 Answering paragraph 58, Mr. Hubbard denies each and every
14 allegation contained therein.
15

16 Answering paragraph 59, Mr. Hubbard denies each and every
17 allegation contained therein.
18

19 Answering paragraph 60, Mr. Hubbard denies each and every
20 allegation contained therein.
21

22 Answering paragraph 61, Mr. Hubbard denies each and every
23 allegation contained therein.
24

25 Answering paragraph 62, Mr. Hubbard denies each and every
26 allegation contained therein.
27

28 Answering paragraph 63, Mr. Hubbard repeats its responses to
29 paragraphs 1 through 62 as though set forth here in full.
30

31 Answering paragraph 64, Mr. Hubbard denies each and every
32 allegation contained therein.

1 Answering paragraph 65, Mr. Hubbard denies each and every
2 allegation contained therein.
3

4 Answering paragraph 66, Mr. Hubbard denies each and every
5 allegation contained therein.
6

7 Answering paragraph 67, Mr. Hubbard denies each and every
8 allegation contained therein.
9

10 Answering paragraph 68, Mr. Hubbard denies each and every
11 allegation contained therein.
12

13 Answering paragraph 69, Mr. Hubbard denies each and every
14 allegation contained therein.
15

16 Answering paragraph 70, Mr. Hubbard denies each and every
17 allegation contained therein.
18

19 Answering paragraph 71, Mr. Hubbard repeats his responses to
20 paragraphs 1 through 70 as though set forth here in full.
21

22 Answering paragraph 72, Mr. Hubbard denies each and every
23 allegation contained therein.
24

25 Answering paragraph 73, Mr. Hubbard denies each and every
26 allegation contained therein.
27

28 Answering paragraph 74, Mr. Hubbard denies each and every
29 allegation contained therein.
30

31 Answering paragraph 75, Mr. Hubbard denies each and every
32 allegation contained therein.

1 Answering paragraph 76, Mr. Hubbard denies each and every
2 allegation contained therein.
3

4 Answering paragraph 77, Mr. Hubbard denies each and every
5 allegation contained therein.
6

7 Answering paragraph 78, Mr. Hubbard denies each and every
8 allegation contained therein.
9

10
11 **AFFIRMATIVE DEFENSES**

12 Mr. Hubbard sets forth below his affirmative defenses. By setting
13 forth these affirmative defenses, Mr. Hubbard does not assume the burden of
14 proving any fact, issue, or elements of a cause of action where such burden
15 properly belongs to Plaintiff. Moreover, nothing stated herein is intended or shall
16 be construed as an acknowledgement that any particular issue or subject matter
17 necessarily is relevant to Plaintiff's allegations.
18
19

20
21 **FIRST AFFIRMATIVE DEFENSE**

22 (Failure To State A Cause Of Action)

23 Each cause of action in the Complaint fails to state a claim upon
24 which relief can be granted.
25

26 **SECOND AFFIRMATIVE DEFENSE**

27 (Equitable Defenses)

28
29 Plaintiff's claims against Mr. Hubbard are barred, in whole or in part,
30 by the doctrines of laches, unclean hands, estoppel, and waiver.
31

32 DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :
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1 **THIRD AFFIRMATIVE DEFENSE**

2 (First Amendment Rights)

3
4 The Complaint, and each cause of action therein, is barred to the
5 extent that the conduct complained of is protected by the free speech provisions of
6 the United States constitutions, as well as each respective individual States
7 constitutions.
8

9 **FOURTH AFFIRMATIVE DEFENSE**

10 (Good Faith)

11
12 Each cause of action is barred, in whole or in part, because Mr.
13 Hubbard acted in good faith at all times.
14

15 **FIFTH AFFIRMATIVE DEFENSE**

16 (Lack of Intent)

17
18 Plaintiff's claims based on alleged willful misrepresentations are
19 barred because the representations and actions alleged were not intended to
20 mislead or deceive consumers.
21

22 **SIXTH AFFIRMATIVE DEFENSE**

23 (Puffing)

24
25 Plaintiff's claims for false advertising are barred because the alleged
26 deceptive statements were such that no reasonable person could have reasonably
27 relied upon or misunderstood Mr. Hubbard's statements as claims of fact.
28

29 **SEVENTH AFFIRMATIVE DEFENSE**

30 (Unconstitutionality of Monetary Relief)

31
32 DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :
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COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;
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1 An award of monetary relief, other than restitution, to Claimant under
 2 California's Business and Professions Code Sections 17200 et seq, including but
 3 not limited to penalties of any type, would violate the due process provisions of the
 4 United States and all other respective states' constitutions, including but not
 5 limited to California.
 6
 7

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 (Causation is Lacking)

10
 11 Each cause of action is barred, in whole or in part, because Plaintiff
 12 has not sustained any injury or damage by reason of any material act of omission
 13 on Mr. Hubbard's part.
 14

15 **NINTH AFFIRMATIVE DEFENSE**

16 (Materiality is Lacking)

17
 18 Each cause of action is barred, in whole or in part, because Plaintiff
 19 has not sustained any injury or damage by reason of any material act or omission
 20 on Mr. Hubbard's part.
 21

22 **TENTH AFFIRMATIVE DEFENSE**

23 (Lack of Reliance)

24
 25 Plaintiff's claims are barred, in whole or in part, because of the lack of
 26 reliance by consumers on the alleged misrepresentations by Mr. Hubbard identified
 27 in the Complaint.
 28

29 **ELEVENTH AFFIRMATIVE DEFENSE**

30 (Lack of Awareness)

31
 32 DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :
 FEDERAL TRADEMARK INFRINGEMENT; VIOLATION OF THE LANHAM ACT 43(A); UNFAIR
 COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;
 CALIFORNIA COMMON LAW UNFAIR COMPETITION - 12

1 Plaintiff's claims are barred, in whole or in part, because consumers
2 lacked awareness of the alleged misrepresentations by Mr. Hubbard described in
3 the Complaint.
4

5 **TWELFTH AFFIRMATIVE DEFENSE**

6 (Conduct Not Unlawful)

7
8 The business practices relating to the allegations in the Claim are not
9 unlawful.
10

11 **THIRTEENTH AFFIRMATIVE DEFENSE**

12 (Conduct Not Fraudulent Nor Likely To Deceive)

13 Mr. Hubbard's conduct is not fraudulent and was not likely to mislead
14 or deceive consumers and/or the public.
15

16 **FOURTEENTH AFFIRMATIVE DEFENSE**

17 (Lack of Materiality)

18
19 Plaintiff's claims based on alleged misrepresentations are barred
20 because the representations alleged by Plaintiff were not material in that, in light of
21 information commonly known to consumers, they were not likely to affect their
22 purchasing decisions. Mr. Hubbard's representations and actions alleged in the
23 Complaint were not likely to mislead consumers acting reasonably under the
24 circumstances.
25
26

27 **FIFTEENTH AFFIRMATIVE DEFENSE**

28 (Lack of Standing)

1 Plaintiff lacks either standing and/or capacity to bring some or all of
2 the claims alleged in the Complaint.
3

4 **SIXTEENTH AFFIRMATIVE DEFENSE**

5 (Negligence and/or Misconduct of Others)

6 If there was any negligence and/or other misconduct proximately
7 causing the damages allegedly sustained by Plaintiff, such negligence and/or other
8 misconduct was that of parties other than Mr. Hubbard, and recovery should be
9 barred or eliminated to that extent.
10
11

12 **SEVENTEENTH AFFIRMATIVE DEFENSE**

13 (Adequate Remedy at Law)

14 Plaintiff's claims for equitable relief are barred to the extent there is
15 an adequate remedy at law.
16
17

18 **EIGHTEENTH AFFIRMATIVE DEFENSE**

19 (No Right to Injunctive Relief)

20 To the extent the Complaint seeks injunctive relief, Plaintiff is not
21 entitled to such relief because the hardship that would be imposed on Mr. Hubbard
22 by any such relief would be greatly disproportionate to any hardship that Plaintiff
23 might suffer in its absence. Further, any injunctive relief that would require
24 regulation by the Court on an ongoing basis is inappropriate, and Mr. Hubbard's
25 advertising, marketing, and trademark activities are already monitored by various
26 federal and state agencies
27
28
29
30
31
32

1 **NINETEENTH AFFIRMATIVE DEFENSE**

2 (No Right to Punitive or Exemplary Damages)

3
4 Plaintiff is not entitled to punitive or exemplary damages on any cause
5 of action alleged in the Complaint. Any award of punitive or exemplary damages
6 would violate the due process and/or equal protection clauses of the California and
7 Unites States constitutions, as well as all other respective states.
8

9 **TWENTIETH AFFIRMATIVE DEFENSE**

10 (No Right to Restitution)

11
12 While denying that Plaintiff has stated a valid claim or claims under
13 California Business and Professions Codes Sections 17200 et seq., if such claims
14 are found to exist, an order for restitution is barred to the extent that Plaintiff did
15 not pay monies directly to Mr. Hubbard. See, e.g., Korea Supply Co. V. Lockheed
16 Martin Corp., 29 Cal. 4th 1134 (2003).
17
18

19 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

20 (No Attorneys' Fees)

21
22 Plaintiff's request for attorneys' fees in this matter is barred because it
23 lacks any basis in law or contract.
24

25 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

26 (Unjust Enrichment)

27
28 Plaintiff's claims are barred to the extent Plaintiff would be unjustly
29 enriched if allowed to recover any monies claimed to be due in the Complaint.
30
31

1 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

2 (Damages Caused By Other Causes)

3
4 To the extent that Plaintiff suffered any damages, such damages were
5 proximately caused by persons, entities, and/or factors or events other than Mr.
6 Hubbard and for which Mr. Hubbard was and is not responsible.
7

8 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

9 (Failure to Mitigate)

10
11 Without admitting any wrongful conduct on the part of Mr. Hubbard,
12 and without admitting that Plaintiff has suffered any loss, damage or injury,
13 recovery for any such loss, damage, or injury is barred, in whole or in part, because
14 Plaintiff failed to mitigate such loss, damage, or injury.
15

16 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

17 (Lack of Damage)

18
19 Plaintiff has not suffered any damage as a result of any actions
20 allegedly taken by Mr. Hubbard, and are thus barred from asserting any claims
21 against Mr. Hubbard.
22

23 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

24 (Justifications/Excuse)

25
26 Mr. Hubbard's alleged actions, at all relevant times and places, were
27 necessary to the competitive operation of its business, and Plaintiff's alleged
28 injury, if any, is outweighed by the benefit to the public of Mr. Hubbard's actions.
29
30
31

1 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

2 (Statute of Limitations)

3
4 Plaintiff's claims are barred by the applicable statutes of limitations, if
5 applicable to the various claims pled.

6 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

7 (Set-off)

8
9 Mr. Hubbard alleges that, even if Plaintiff's claims are meritorious,
10 which Mr. Hubbard denies, those claims are subject to setoff and recoupment.

11 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

12 (Federal Preemption)

13
14 Plaintiff's claims are expressly and impliedly preempted by federal
15 law, including but not limited to, the laws enforced by the FTC, USPTO, and The
16 Food, Drug and Cosmetic Act.

17 **THIRTIETH AFFIRMATIVE DEFENSE**

18 (Safe Harbor)

19
20 Plaintiff's state law claims are barred by California's safe harbor
21 doctrine because Mr. Hubbard's alleged actions, at all relevant times and places,
22 were in compliance with applicable law.

23 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

24 (Primary/Exclusive Jurisdiction)

25
26 Plaintiff's claims are barred by the doctrines of primary and/or
27 exclusive regulatory agency jurisdiction.

28
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31
32 DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :
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1
2
3 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

4 (Compliance with Laws)

5 Plaintiff's claims are barred because the conduct alleged in the
6 Complaint complies with applicable laws, including but not limited to Food and
7 Drug Administration regulations, The Federal Trade Commission, Trademark and
8 copyright laws of the United States, and The Food, Drug, and Cosmetic Act.
9
10

11 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

12 (Uncertain/Unmanageable Damages)

13 Plaintiff's requested monetary relief is too speculative and/or remote
14 and/or impossible to prove and/or allocate.
15

16 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

17 (Unclean Hands)

18 Plaintiff's claims against Mr. Hubbard are barred, in whole or in part,
19 due to unclean hands. Plaintiff has engaged in naming, labeling, marketing and
20 advertising conduct designed to deceive consumers about its products. Thus,
21 Plaintiff is seeking to capitalize in this case on the fruits of its own misconduct in
22 the form of misleading labeling and advertising.
23
24
25

26 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

27 (Reservations)

28 Further responding, Mr. Hubbard states that it currently has
29 insufficient knowledge or information on which to form a belief as to whether it
30
31

32 DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :
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1 may have additional, as yet unstated, affirmative defenses available. Mr. Hubbard
2 reserves the right to assert additional affirmative defenses in the even that
3
4 discovery indicates it would be appropriate.

5 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

6
7 (Fraud)

8 Plaintiff's claims in regards to Trademark Infringement are barred, if
9
10 the trademarks claimed were obtained by Plaintiff knowingly making a false
11 representation to the U.S. Patent and Trademark Office (USPTO) regarding a
12 material fact, or else willfully withheld material information, and the USPTO
13 would not have issued the registration but for its reliance on the false
14 representation.
15

16 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

17
18 (Misuse of Trademark)

19 Plaintiff's claims are barred, if Plaintiffs have used the mark(s) in
20
21 violation of any State or Federal Laws.

22 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

23
24 (Acquiescence)

25 Plaintiff's claims are barred, if Plaintiffs have previously failed to take
26
27 action against infringing parties, or otherwise indicating, implicitly or explicitly,
28 that nothing will be done about the infringing action.

29 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

30
31 (Fair Use)

32 DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :
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1 Plaintiff's claims are barred, in whole or in part, due to fair use. Any
2 use of the alleged owned mark(s), was used in a way that is descriptive of Mr.
3 Hubbard's product and the taste therein. The use of the descriptive name of
4 "pom", in describing the flavor "pomegranate", was not used as a copyright or
5 trademark, and was used in good faith, barring any and all claims.
6
7

8 **FOURTIETH AFFIRMATIVE DEFENSE**

9 (Genericness)
10

11 Plaintiff's claims are barred, in whole or in part, because the
12 Plaintiff's marks are generic. The Plaintiff's mark, which has allegedly been
13 infringed, is a mark that describes the entire category or genus of their product(s)
14 that the mark is supposed to distinguish, and thus cannot receive protection under
15 the law. Generic marks are either generic from the outset, or become generic after
16 they become part of the common descriptive name of a category or genus of
17 products.
18
19

20 **FORTY-FIRST AFFIRMATIVE DEFENSE**

21 (Abandonment of a Mark)
22

23 Plaintiff's claims are barred, in whole or in part, if the Plaintiffs have
24 abandoned the mark. Abandonment occurs when the trademark owner stops using
25 the mark with no intention to resume using it. Use of a mark in this context means
26 the bona fide use of the mark made in the ordinary course of trade, and not made
27 merely to reserve a right in a mark. Nonuse is prima facie evidence of
28 abandonment. Furthermore, any failure to police and enforce a mark can lead to
29
30
31

1 abandonment if the trademark owner is deemed to have impliedly consented to
 2 confusingly similar uses of the mark. If abandonment occurs, all rights in the mark
 3 cease.
 4

5 **FORTY-SECOND AFFIRMATIVE DEFENSE**

6 (Genericide)

7
 8 Plaintiff's claims are barred in whole or in part, because of their mark
 9 becoming genericide.
 10

11 **FORTY-THIRD AFFIRMATIVE DEFENSE**

12 (No Likelihood of Confusion)

13
 14 Plaintiff's claims are barred, in whole or in part, because there is no
 15 likelihood of confusion between the Plaintiff's marks, and Mr. Hubbard's product
 16 Pur Pom.
 17

18 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

19 (Monopoly)

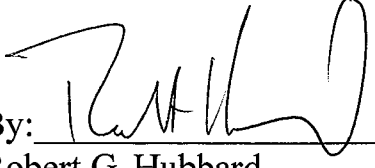
20
 21 Plaintiff's claims are barred, in whole or in part, because allowing
 22 them to stake claim to the letters "pom", would in essence allow them to claim a
 23 monopoly on the letters "pom", no matter how used. Plaintiffs have an extensive
 24 track record of filing similar lawsuits against companies using the three letters in
 25 sequence, for instance, Plaintiffs are currently litigating against a company with a
 26 product called "pompis". Clearly this is just another example of Plaintiffs attempts
 27 to gain a monopoly on the word "pom".
 28
 29
 30
 31

Prayer for Relief

WHEREFORE, Mr. Hubbard prays for judgment as follows:

1. That Plaintiff take nothing by way of his Complaint and that it be dismissed with prejudice;
2. That the Complaint be dismissed with prejudice and judgment entered in favor of Mr. Hubbard;
3. That Mr. Hubbard be awarded his costs, disbursements and attorneys' fees in this action; and
4. For such other and further relief as this Court deems just and proper.

DATED: November 25th, 2013

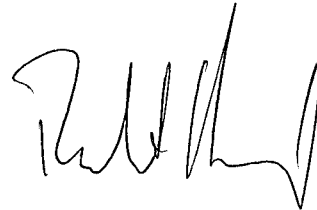
By: 
Robert G. Hubbard,
Defendant, Pro Se

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Mr. Hubbard demands a trial by jury of all
Triable issues and affirmative defenses herein.

DATED: November 25th, 2013

By:



Robert G. Hubbard
Defendant, Pro Se

Certificate of Service

I hereby certify that, on this 25TH day of November, 2013, a true and correct copy of the
DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED
COMPLAINT FOR : FEDERAL TRADEMARK INFRINGEMENT; VIOLATION OF THE
LANHAM ACT 43(A); UNFAIR COMPETITION UNDER CALIFORNIA BUSINESS AND
PROFESSIONS CODE 17200 ET SEQ.; CALIFORNIA COMMON LAW UNFAIR
COMPETITION and Demand for Jury Trial was conventionally served on the following by first
class U.S. mail at the address below:

Roll Law Group pc
11444 West Olympic Blvd.
Los Angeles, CA 90064-1557
Tel. 310-966-8400
Fax. 310-966-8810
Attorneys for Pom Wonderful, LLC

DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :
FEDERAL TRADEMARK INFRINGEMENT; VIOLATION OF THE LANHAM ACT 43(A); UNFAIR
COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;
CALIFORNIA COMMON LAW UNFAIR COMPETITION - 23

1 DATED: November 25th, 2013

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3 By:

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5 Robert G. Hubbard
6 Defendant, Pro Se
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32 DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR :
FEDERAL TRADEMARK INFRINGEMENT; VIOLATION OF THE LANHAM ACT 43(A); UNFAIR
COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200 ET SEQ.;
CALIFORNIA COMMON LAW UNFAIR COMPETITION - 24